Filed 2/11/09 P. v. Hendrix CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. BENNY HENDRIX, Defendant and Appellant.	B212589 (Los Angeles County Super. Ct. No. NA007938)

APPEAL from a judgment of the Superior Court of Los Angeles County, James B. Pierce, Judge. Dismissed.

Matthew D. Alger, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant, Benny Hendrix, purports to appeal from the denial of a mandate petition that sought deoxyribonucleic acid testing. We noted that the denial of such an order may not be appealable. Because we have a duty to raise issues concerning our own jurisdiction on our own motion, we issued an order to show cause concerning possible dismissal of the appeal and permitted the parties to orally argue the matter. (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126; *Olson v. Cory* (1983) 35 Cal.3d 390, 398.)

Penal Code section 1405, subdivision (j) states in part: "An order granting or denying a motion for DNA testing under this section shall not be appealable, and shall be subject to review only through petition for writ of mandate or prohibition filed by the person seeking DNA testing, the district attorney, or the Attorney General. The petition shall be filed within 20 days after the court's order granting or denying the motion for DNA testing." Thus, defendant may not appeal from the postjudgment deoxyribonucleic acid testing order. Defendant argues that we should treat the appeal as a writ proceeding. We decline to do so because: the notice of appeal was filed more than 20 days after the trial court denied the postjudgment deoxyribonucleic acid testing request (Pen. Code, § 1405, subd. (j)); deeming an appeal to be a writ petition is reserved only for cases where "unusual circumstances" are present and none are here (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 744-747; *Olson v. Cory*, *supra*, 35 Cal.3d at pp. 400-401); and to act otherwise would contravene the jurisdictional limits on the right to secure appellate review. (*Sears, Roebuck and Co. v. National Union Fire Ins. Co. of Pittsburgh* (2005) 131 Cal.App.4th 1342, 1349; *Mid-Wilshire Associates v. O'Leary* (1992) 7 Cal.App.4th 1450, 1455.)

The appeal is dismissed.

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TURNER, P. J.

We concur:

ARMSTRONG, J.

KRIEGLER, J.